FILED
MAY 13 1994
OFFICE OF THE CLERK

No. 93-892

In the Supreme Court of the United States

OCTOBER TERM, 1993

NTA GRAPHICS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MOTION TO VACATE AND REMAND

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 514-2217

FREDERICK L. FEINSTEIN
General Counsel
National Labor Relations Board
Washington, D.C. 20570

In the Supreme Court of the United States

OCTOBER TERM, 1993

No. 93-892

NTA GRAPHICS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MOTION TO VACATE AND REMAND

The Solicitor General, on behalf of the National Labor Relations Board (the Board), respectfully moves that the judgment of the court of appeals be vacated as moot and the case remanded to that court with instructions to remand it to the Board to vacate the administrative order and the certification on which it is based.

1. Based upon a Board election held on September 25, 1987, the Board certified the Union[1] as the collective-bargaining representative of a unit comprised of petitioner's pressroom employees. To obtain judicial review of the validity of the Board's unit determination, petitioner refused to bargain with the Union. The Board

[1] Local 289, Graphic Communications International Union, AFL-CIO. The Union is not a party before this Court.

found that petitioner's refusal violated Section 8(a)(5) of the National Labor Relations Act, 29 U.S.C. 158(a)(5), and issued an order providing, inter alia, that petitioner cease and desist from refusing to bargain with the Union and that petitioner "[o]n request, bargain with the Union as the exclusive representative" of the identified unit. *NTA Graphics, Inc.*, Case No. 8-CA-24277; Pet. App. A9-A10. On June 21, 1993, the Sixth Circuit enforced the Board's order, holding that the Board had not abused its discretion in making its unit determination. Pet. App. A3-A4. On February 28, 1994, this Court granted petitioner's petition for a writ of certiorari. The essential issue presented by the petition is whether the Board's determination of a separate bargaining unit of pressroom employees in this case constitutes an abuse of discretion and represents an unexplained departure from an established rule that, in the lithographic printing industry, a lithographic production bargaining unit must include, at a minimum, both pressroom and preparatory employees.

2. On April 20, 1994, the Union advised petitioner, by letter, that, in view of the passage of time and employee turnover since the 1987 Board election, it "disclaims any interest in representing the bargaining unit of press room employees of NTA Graphics, Inc.," and that this disclaimer of interest "is unequivocal" and "is intended to negate any duty to bargain the Employer may have as a result of the NLRB's Decision and Order in Case No. 8-CA-24277 and the 6th Circuit's Order of June 21, 1993," enforcing the Board's bargaining order.[2] The Union indicated that it had been reluctant to reach this decision, but after review of the history of the dispute, it con-

---

[2] The Union's letter is reproduced in the Appendix, *infra*.

cluded it "*cannot* effectively represent" the employees in question.

In view of the Union's disclaimer, the order that petitioner cease and desist from refusing to bargain with the Union and that petitioner bargain with the Union on request, is moot because the Union is no longer making such a request.[3] Moreover, the question whether a unit of petitioner's pressroom employees is an appropriate unit for bargaining has become moot, for the only union that was certified to represent employees in that unit has unequivocally disclaimed any further interest in representing that unit. If a future request by a union for a bargaining order were to arise, the Board would consider the question of an appropriate bargaining unit on the basis of its findings of the facts existing at that time.

3. Accordingly, the Court should vacate the judgment of the court of appeals as moot and remand the case to that court with instructions to remand it to the Board to vacate the Board's order in Case No. 8-CA-24277 and to vacate the certification of the Union on which that order is based. See *United States* v. *Munsingwear*, 340 U.S.

---

[3] The remaining portions of the Board's order (Pet. App. A9-A10) are likewise moot because they have no practical significance absent the Union's continued interest in representing petitioner's employees.

36, 39-40 (1950); *Mechling Barge Lines* v. *United States*, 368 U.S. 324, 329-331 (1961); *Board of Governors of the Federal Reserve System* v. *Security Bancorp*, 454 U.S. 1118 (1981).

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

FREDERICK L. FEINSTEIN
General Counsel
National Labor Relations Board

MAY 1994

APPENDIX

KLIMIST, MCKNIGHT, SALE, MCCLOW & CANZANO, P.C.
Attorneys at Law
400 Galleria Officentre, Suite 117
Southfield, MI 48034-8460

Telephone (810) 354-9650
Fax (810) 354-3656

Samuel C. McKnight
Judith A. Sale
John R. Canzano
Roger J. McClow
Steven M. Wolock
Ellen E. Moss
Lisa M. Smith
David R. Radtke

April 20, 1994

VIA Facsimile No. (419) 241-6894

Timothy C. McCarthy
Shumaker, Loop & Kendrick
North Courthouse Square
1000 Jackson
Toledo, OH 43624-1573

Re: NTA Graphics, Inc. and GCIU Local 289

[Page 1]
Dear Mr. McCarthy:

I am writing you on behalf of GCIU Local 289 to advise you that the Union disclaims any interest in representing the bargaining unit of press room employees of NTA Graphics, Inc. This disclaimer is intended to negate any duty to bargain the Employer may have as a result of the NLRB's Decision and Order in Case No. 8-CA-24277 and the 6th Circuit's Order of June 21, 1993 in *NLRB* v. *NTA Graphics Inc.*, Case No. 92-6085.

This disclaimer of interest is unequivocal. The Union reluctantly has reached this decision after reviewing the history of our dispute and concluding that it *cannot* effectively represent the press room employees at NTA Graphics.

The Union originally petitioned for an election on June 12, 1987. The NLRB found that a unit of press room employees was appropriate. There were approximately 40 employees in the press room unit. An election was conducted on August 25, 1987. The Union narrowly won the election by a 7 to 6 margin, because the Employer successfully challenged the ballots of 16 Union supporters who had been terminated before the election. The 6th Circuit, in Case No. 92-5083, concluded that the Employer had *not* unlawfully discharged those 16 employees and denied enforcement of the Board's order directing their reinstatement. This Mandate issued March 17, 1993.

In June of 1993, 9 more press room employees were laid off/terminated. Their layoffs/terminations are the subject of another NLRB complaint (Case No. 8-CA-25528) scheduled for hearing on August 16, 1994. The Union is satisfied that (assuming the NLRB ultimately directs reinstatement of those 9 employees) only one or two will choose to return to employment at NTA Graphics.

[Page 2]

In addition to the loss of 16 supporters in June of 1987 and 9 supporters in June of 1993, there also has been considerable turnover among remaining unit employees over the last several years.

In short, since the 6th Circuit's Order directing bargaining on July 21, 1993, it has become clear to the Union that it cannot effectively represent press room employees at NTA Graphics. In August of 1987, the Union won the election by a one vote margin. The turnover of unit employees and the passage of time has dissipated employee interest in Union representation. The Union has no relationship to the current press room employees at NTA Graphics. Assuming the United States Supreme Court enforces the 6th Circuit's Order in Case No. 92-6085, the Union's first opportunity to bargain will be in 1995. The Union never imagined when it began this process in June of 1987 that the opportunity to bargain could be delayed until 1995.

I saw in the February 17, 1994 addition of the Toledo Blade a legal notice that NTA Graphics has a tax arrearage of over $300,000.00. We believe it is time to call it a day. We are not interested in subjecting NTA Graphics to

additional legal expense for no purpose. The Union cannot represent press room employees at NTA Graphics.

Very truly yours,

KLIMIST, MCKNIGHT, SALE,
MCCLOW & CANZANO, P.C.

ss/ Samuel C. McKnight
Samuel C. McKnight

SCM/mmk

cc: Frederick J. Calatrello
Regional Director, NLRB Region 8
Via Facsimille No. (216) 522-2418